IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NOS.1171 AND 1172 OF 2006
and
M.P.1 OF 2007

The Executive Officer
Kolappalur Town Panchayat
Kolappalur ..Appellant in both the Appeals

Vs.

1.M/s Maxwell Apparel Industries-
Limited represented by its
General Manager,
No.2/279-A, G.D.Road,
Mahalashmi Nagar,
Kolappalur Village,
Gopi Taluk. ...1st Respdt. in
SA.NO.1171/06 /
Respdt. in SA.1172/06

2.The Superintending Engineer,
Public Works Department,
Erode. ...2nd Respondent in
SA.1171/06

These Second appeals have been filed against the Judgment and decree dated 16.2.2006 in A.S.No.15 and 34 of 2005 on the file of the Principal Subordinate Judge, Gobichettipalayam confirming the judgment and decree dated 22.9.2004 in O.S.Nos.132 of 1997 and 57 of 2001 on the file of the District Munsif Court, Gobichettipalayam.

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For Appellant: Mr.S.A.Hafiz
For Respondent: Mr.S.V.Jeyaraman
No.1 Senior Counsel
for Mr.M.Duraisamy
For Respondent
No.2: No appearance

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J U D G M E N T

This Judgment shall govern these two appeals in S.A.Nos.1171 and 1172 of 2006.

2.These appeals have been filed challenging the judgments made in A.S.Nos.15 of 2001 and 34 of 2005 on the file of the learned District Judge, Ooty. The first respondent/plaintiff filed two suits in O.S.Nos.132 of 1997 and 57 of 2001, challenging the property tax assessment made by the respondent panchayat in respect of the factory and premises in the first suit and in respect of the Canteen, Guest House and other premises in the second suit.

3.The plaint averments in O.S.No.132 of 1997 are as follows:

The plaintiff is a limited company registered under the Indian Companies Act. The plaintiff's business is the manufacture of cotton yarn and the factory and its land is situated within the panchayat limits of the defendant No.1. The construction of the factory started in the year 1994-95 and it is not fully completed. The first defendant issued a special notice dated 14.3.1997 demanding payment of a tax of Rs.5,01,600/- on the basis of an estimation of the value of the property at Rs.Five crores and one lakh. The notice referred to the provisions of the Tamil Nadu Village Panchayat Act 1958 which has been repealed. The plaintiff objected to the said fixation, as the value was only Rs.Two crores and odd as per his letter dated 19.2.1996 and the tax would be worked out to only around Rs.2,00,000/-. The first defendant had proceeded on the basis of a Civil Engineer's certificate dated 4.10.1994. The Superintending Engineer, Public Works Department, Erode had already valued the suit property and as he is the competent authority to decide the valuation, he has been added as party. Hence, the plaintiff has filed the suit for a declaration that the assessment of the value under the special notice dated 14.3.1997 for assessment No.2411 and the special notice dated 20.3.1997 in No.17 to 22/96-97 for Door Nos.729B to G is illegal, unconstitutional, unenforceable, arbitrary, violative of Panchayat Act and against the principles of natural justice and bad in law and also consequential permanent injunction restraining the defendant No.1 from recovering or collecting the taxes due under them in contravention of the law and the said Act.

4. The material averments of the written statement filed by the first defendant in the first suit are as follows:

The suit is false, frivolous and not maintainable in law and on facts. The construction in the suit property was completed

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even prior to October, 1995 and it had started functioning without proper licence from the District Industries Centre. This fact was brought to the notice of the plaintiff on 7.11.1995 and demand notice was sent for house tax for the period 1995-96 to the plaintiff. The plaintiff has paid the tax of Rs.5,51,100/- for the period 1995-96 on 27.3.1996 without any objection. Therefore, the plaintiff is estopped under law to question the same in this suit. The Demand Notice Dated 14.3.1997 for the period 1996-97 claiming tax at Rs.5,01,100/- was issued on the basis and in pursuance of the demand for the previous year as aforesaid. The completion report of the building and actual cost of construction were not at all submitted by the plaintiff in spite of repeated demands. No proper appeal or revision has been filed. Therefore, the suit was liable to be dismissed.

5. The plaint averments in O.S.No.57/2001 are as follows:

The plaintiff is a limited company registered under the Indian Companies Act, manufacturing cotton yarn. It is situated within the panchayat limits of the defendant and is assessed to property tax by the defendant. ItemNo.1 of the property is the canteen and its assessment Number is 368. Item No.2 of the property is the Business Manager's residential quarters and its assessment No. is 369. Item No.3 is the guest house and its assessment No. is 370. The property tax for item No.1 is Rs.6,583/- and for item No. 2 is Rs.2,722.50 and item No.3 is Rs.3,465/- per half year. The defendant issued special notices of property tax at the rate of Rs.8,229.50 and a revised special notice dated 24.6.2000, which were served on the plaintiff on 6.7.2000 increasing the existing tax by 150%. Likewise for item No.2, under tax assessment No.369 also it was increased from the existing tax of Rs.5,445/- to Rs.6,806/- which is 25% increase. Likewise, for item No.3 under the assessment No. 369 also, the existing tax of Rs.6,930/- was increased by 25% namely Rs.8,663/-. The tax assessment demand notices dated 12.10.1999 and 23.6.2000 and the Special notice dated 15.3.1999 and the revised special notices dated 26.8.1999 and 6.7.2000 are illegal, arbitrary and not binding on the plaintiff. Hence the aforementioned suit has been filed for a declaration that the assessment orders dated 12.10.1999 and 23.6.2000 and the Special notice dated 15.3.1999 and the revised special notices dated 26.8.1999 and 6.7.2000 are null and void arbitrary, illegal, against the law and not binding on the plaintiff the defendant panchayat should be restrained by means of a consequential permanent injunction from collecting tax on the above basis. The admitted tax was deposited by the plaintiff for the year 1998-99 second half year. Hence, the suit for declaration and a consequential permanent injunction has been filed.

6. The material averments of the written statement filed by

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the first defendant in the above suit are as follows:

The suit is false, frivolous and not maintainable on law and facts. The properties were assessed to house tax as per the Panchayat Act upto 30.9.1998. The entire tax were paid by the plaintiff without any arrears. From 1.10.1998 onwards, the panchayats were brought under the purview of the District Municipalities Act. Item Nos.2 and 3 are classified as residential houses and hence an increase of 25% was made through special notice and demand notice. The plaintiff paid the property tax up to 1999-2000 first half year without any objection. As far as item No.1 is concerned, it is a canteen and hence, it cannot be classified as residential building. The plaintiff sent a letter on 4.10.1999 stating that the canteen is not run on profit basis and it cannot be assessed as an industrial building. The defendant issued a detailed reply on 8.10.1999 stating that the assessment was correct. Against which, no appeal or revision has been filed by the plaintiff. The plaintiff did not pay tax for the relevant periods and hence, the suit is liable to be dismissed on that ground. The suit has been filed vexatiously in continuation of O.S.No.132/1997 to harass the defendant and evade the payment of lawful tax due.

7. At the time of trial, necessary issues were framed and both the suits were taken up for trial jointly by the District Munsif, Gobichettipalayam. On trial, O.S.No.132 of 1997 was decreed, while the other suit in O.S.No.57 of 2001 was dismissed. Aggrieved over the judgment in O.S.No.132 of 1997, the panchayat took it on appeal in A.S.No.15 of 2005 and the same was dismissed by the first appellate forum. Aggrieved over the dismissal of the suit in O.S.No.57 of 2001, the plaintiff took it on appeal in A.S.No.34 of 2005 and the first appellate Court allowed the appeal. Thus, aggrieved by the judgment in A.S.Nos.15 of 2005 and 34 of 2005, these two appeals have been brought forth by the Panchayat concerned.

8. At the time of admission, the following substantial Questions of law were formulated:

1.Whether the Civil Court has jurisdiction to entertain the suit against the order of assessment of property tax and consequential demand when alternative redressal mechanism by way of appeal under Section 89 of the Tamil Nadu District Municipalities Act to the Taxation Appeals Committee and further appeal to the District Court is available in law?

2. Whether the plaintiffs having admitted and accepted the valuation and the assessment and paid the tax for

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the year 1995-96 is not estopped from challenging the demand for subsequent period?

3. Whether the learned District Munsif is right in holding that the Government Order in G.O.Ms.NO.75 Municipal Administration and Water Supply Department dated 31.3.1995 over rides the provisions of Tamil Nadu District Municipality (Amendment Act 1994) Act 25 of 1994?

4. Whether the assessment on the basis of Capital value as per Section 82(2) Tamil Nadu District Municipality Act was proper and in conformity with law?

9. Advancing his arguments on behalf of the appellant in both the appeals, learned counsel for the appellant would submit that in the instant case, it is an admitted position that first respondent/plaintiff is a registered company under the Indian Companies Act and is manufacturing cotton yarn and the factory and its land is situated within the panchayat limits of the first defendant in the suit. After the construction was over, the first defendant /appellant issued a special notice dated 14.3.1997 demanding payment of a tax of Rs.5,01,600/- on the basis of an estimation of the value of the property and following the same, the tax has been paid. Having made such a payment, the respondent/plaintiff was estopped from questioning the assessment made. Apart from that, in the instant case, the value of the land and building were assessed independently with reference to the need, desirability, and necessity and comparative valuation principal in fixing the annual rental value. The plaintiff has now questioned the demand notice dated 14.3.1997 under Ex.A1. But, he has not questioned the original assessment made under Ex.B7 dated 19.2.1996 and the demand for the year 1995-1996 under Ex.B9. While he has not questioned the earlier assessment and has paid the tax, he is estopped from questioning the same. The first appellate Court has not considered those aspects and apart from that there is no mandatory provision or direction in fixing the capital value only on the basis of estimation given by the Public Works Department. The first appellate Court has not taken into consideration both these aspects, but had granted decree in favour of the plaintiff and hence, the order of the first Appellate Court has to be set aside.

10. Learned Senior counsel appearing for the respondent in short would submit that admittedly while issuing special notice, the Panchayat has not followed the procedural formalities as contemplated under law. He would further submit that neither the property has been valued by the Public Works Department nor an opportunity was

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given to the respondent/plaintiff to put forth his contentions, but they have done it arbitrarily and so long as it is admitted by the first defendant in his cross-examination , it has got to be necessarily set aside and it has been rightly accepted by the first appellate Court and hence the judgment of the first appellate Court has to be sustained.

11. After hearing both sides, this Court is of the considered opinion that both the appeals do not merit acceptance whatsoever. It is not in controversy that the plaintiff/respondent is having his factory within the panchayat limit of the first defendant/appellant and has also made construction in the year 1994-95 and it was the first defendant who issued special notice on 14.3.1997 making demand for payment of tax for a sum of Rs.5,01,600/- and following which, special notice was issued on 20.3.1997 for the year 1996-97 and in respect of the second item of the suit schedule , the first tax assessment demand notices were issued on 12.10.1999 and 23.6.2000 and the special notice was given on 15.3.1999 and the revised notices were given on 26.8.1999 and on 6.7.2000. As could be seen from the written statement filed by the panchayat, the procedural formalities as required under law were not followed. What was contended by the panchayat before both the Courts below and equally here also is that as there was no need for inspecting the property by the Public Works Department for valuation and since tax has also already been paid earlier, the plaintiff was duty bound to make payment accordingly. The above said stand taken by the panchayat itself would be suffice to reject the claim made in the demand notice for payment of tax. As could be seen from the available materials, even at the time of commencement of the assessment itself, special notices were served and on no occasion the factory, premises or any of the building in question were inspected by the Public Works Department and pursuant to which, the assessment was made. According to the Panchayat, the valuation was made by its officers and on the basis of which, assessment was made. Under the circumstances, the Panchayat has not followed the principles enunciated in law in fixing the property tax . Apart from that, in the instant case, the contention that originally the tax has been paid following the earlier assessment made and therefore, the plaintiff is estopped from questioning the same has to be rejected on the ground that at the time when the first assessment was made, rough estimation was given and on the basis of which tax has been paid. In the instant case, it is in a better position in fixing the annual rental value of the building in question both factory and also the other premises viz., Canteen, Guest House,but the assessment was made by the Municipality and pursuant to which demand notice was served. Hence the special notices have got to be declared as null and void . The first appellate Court was perfectly correct in following the principles of law and has declared both the notices as null and void. Under such circumstances, both the appeals

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do not merit acceptance whatsoever. But the judgment of this Court will not in any way stand in the way of the panchayat concerned assessing the value of the property as one contemplated in law,making proper assessment and recovering tax by following the procedural formalities as one expected in law.

12. The Second appeals are dismissed. No costs. Consequently, MP.No.1 of 2007 is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

VJY

To

1. The Principal Subordinate Judge, Gobichettipalayam
2. The District Munsif, Gobichettipalayam.
3.The Section Officer,VR Section, High Court, Madras.

+1cc to Mr.M.Duraiswamy, Advocate Sr 2371

+2ccs to Mr.S.A.Hafiz, Advocate Sr 2364, 2365

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km/5.2.

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